

THE STROJNIK FIRM LLC
Attorneys at Law
Suite 1401
3030 North Central Avenue
Phoenix, Arizona 85012
(602) 297-3019

Peter Kristofer Strojnik AZBN 026082 CABN 242728

strojnik@skplaw.com

Attorney for Plaintiff Dang Nguyen

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE

DANG QUANG NGUYEN, a single man,) NO. 5:09-cv-03728-JW

) NO. 5:09-cv-03728-JW

Plaintiff,) **NOTICE OF MOTION AND MOTION**
) **FOR SANCTIONS AGAINST**
) **DEFENDANT STATS CHIPPAC, LTD.**
) **AND ITS COUNSEL OF RECORD**

STATS CHIPPAC, INC., a Delaware

Corporation; STATS CHIPPAC, LTD., a Singaporean Corporation,

***REQUEST FOR HEARING TO BE SET
SAME DAY AS HEARING ON MOTION TO
DISMISS***

Defendants.

Hearing Date: September 20, 2010

Hearting Time: 9:00 a.m.

NOTICE IS HEREBY GIVEN that Plaintiff shall move this Court for an order imposing sanctions on Defendant STATS ChipPAC, Ltd. and its local counsel of record pursuant to Rule 11 of the Federal Rules of Civil Procedure on September 20, 2010 at 9:00 a.m. in Judge Ware's courtroom in the San Jose court on the Northern District of California.

1 NOTICE IS FURTHER GIVEN that Plaintiff does respectfully request the Court to
2 consolidate the hearing for this Motion with the hearing on Defendants' Motion to Dismiss
3 (Docs. 59—60) because both are related.
4

MOTION

5 Plaintiff Dang Quang Nguyen, by and through undersigned counsel, hereby moves this
6 Court for an order imposing sanctions on Defendant STATS ChipPAC, Ltd. and its local
7 counsel of record pursuant to Rule 11 of the Federal Rules of Civil Procedure. Several of
8 Defendant Ltd.'s arguments in its Docs. 59-60 Motion to Dismiss egregiously misrepresent fact
9 that is clearly available to all Parties and the Court.
10

11 WHEREFORE, Plaintiff respectfully requests sanctions be imposed on STATS
12 ChipPAC, Ltd. and its local counsel pursuant to Fed. R. Civ. P. 11. Plaintiff further requests
13 the hearing on this Motion be consolidated with the hearing on Defendants' Motion to Dismiss.
14 This Motion is more fully supported by the below Memorandum of Points and Authorities,
15 which by this reference is incorporated herein.
16

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

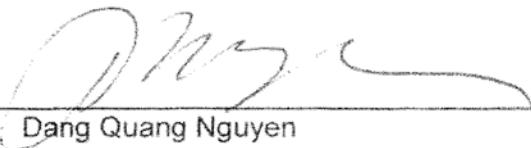
20 Plaintiff filed a First Amended Complaint adding Defendant STATS ChipPAC, Ltd. as a
21 defendant in the instant cause. (Doc. 35). Exhibit 1 to Doc. 35 is the Separation Agreement
22 that is subject of these proceedings. After Plaintiff moved for alternative service due to lack of
23 cooperation by STATS, Ltd.'s local counsel, and the Court granted said motion, Plaintiff served
24 STATS, Ltd. Thereafter, Defendant STATS, Ltd. filed a Motion to Dismiss the First Amended
25 Complaint. (Docs. 59-60). In Defendant's Motion, it argues that it is not liable allegedly based

1 solely on the premise that it allegedly never employed the Plaintiff. However, Exhibit 1 to the
2 First Amended Complaint (Doc. 35) clearly demonstrates that STATS, Ltd. did in fact employ
3 Plaintiff, to wit:

5 This Confidential Separation Agreement and General Release of All Claims ("Separation
6 Agreement") is made by and between STATS ChipPAC Ltd. (the "Company") and Dang Quang
7 Nguyen ("Employee") with respect to the following facts:

8 A. Employee is currently employed by the Company.

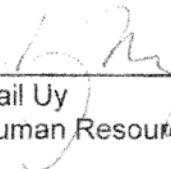
9 Dated: 2/12/2009

10 By: 

Dang Quang Nguyen

11 STATS ChipPAC Ltd.

12 Dated: 2/12/09

13 By: 

Gail Uy
14 Human Resources Manager

15 II. ARGUMENT AND SUPPORTING LAW

16 A. STATS Ltd. and Its Counsel Misrepresented Easily Available Facts

17 Rule 11(b)(3) of the Federal Rules of Civil Procedure states:

18 By presenting to the court a pleading, written motion, or other paper – whether by
19 signing, filing, submitting, or later advocating it – an attorney or unrepresented
20 party certifies that to the best of the person's knowledge, information, and belief,
21 formed after an inquiry reasonable under the circumstances: ... (3) the factual
22 contentions have evidentiary support or, if specifically so identified, will likely
23 have evidentiary support after a reasonable opportunity for further investigation or
24 discovery...

25 Rule 11(c) permits the Court to order sanctions in the form of reasonable attorneys' fees
if Rule 11(b) has been violated.

1 Here, there is no question that STATS, Ltd., through its counsel, misrepresented the
2 truth to Plaintiff and the Court. Defendant argues that it is allegedly not liable to Plaintiff on
3 the premise that it allegedly never employed Plaintiff: “Ltd., a Singaporean corporation, is
4 Inc.’s parent company. However, Ltd. never employed Plaintiff.” Doc. 60 at 11. However,
5 STATS, Ltd.’s local counsel could not reasonably certify that this factual contention is
6 supported by the facts after reasonable inquiry because Exhibit 1 to Plaintiff’s First Amended
7 Complaint – the Separation Agreement that is at the crux of this entire controversy – states in
8 the first paragraph that STATS, Ltd. did in fact employ Plaintiff. Less than due diligence is
9 required to verify this fact. Instead, STATS, Ltd.’s local counsel ignored what is obvious and
10 on the face of the most important exhibit in this case so far. Local counsel must be sanctioned
11 for this inappropriate misrepresentation of fact.

12 **B. Plaintiff Seeks Attorneys’ Fees Directly Resulting From Counsel’s Violation**

13 Rule 11(c)(4) of the Federal Rules of Civil Procedure permits the Court to order
14 “reasonable attorney’s fees and other expenses directly resulting from the violation” of Rule
15 11(b).

16 Plaintiff’s counsel bills out at \$350.00 per hour, and he spent four hours researching
17 legal authority to combat STATS, Ltd.’s argument before he realized Exhibit 1 to the First
18 Amended Complaint demonstrated that STATS, Ltd. admitted that it employed Plaintiff.
19 Furthermore, Plaintiff spent three additional hours researching and preparing this Motion, and
20 anticipates spending another two hours on the Reply. Therefore, Plaintiff respectfully requests
21 sanctions for the sum of THREE-THOUSAND ONE HUNDRED AND FIFTY DOLLARS
22 (\$3,150.00).

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court order sanctions against Defendant STATS ChipPAC, Ltd.'s local counsel in the amount of \$3,150.00. A proposed form of Order will be filed.

RESPECTFULLY SUBMITTED this 31st Day of March, 2010.

THE STROJNIK FIRM LLC

Peter Kristofer Strojnik
3030 North Central Avenue
Suite 1401
Phoenix, Arizona 85012
Attorney for Plaintiff Dang Quang Nguyen